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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,432	09/26/2003	C. Ronald Lambert	Para.2C	8508

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EXAMINER

ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/672,432

Applicant(s)

LAMBERT ET AL.

Examiner

Kurt Rowan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 17 recites the limitation "the shorter side walls" in line 6. There is insufficient antecedent basis for this limitation in the claim.
4. Claim 17 recites the limitation "said curved end wall" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Regan.

The patent to Regan shows an insect trap having a disposable cartridge 16 for use with flying insects with side walls 69, end walls 70, 71 as shown in Figs. 1 and 5. Regan

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shows a spool 85 and a roll of adhesive trapping medium 84 mounted on the spool such that when the spool turns the adhesive rolls onto the spool 78. Regan shows all of the elements recited with the exception of the cartridge being in two pieces which can be mated together. Regan shows a one-piece cartridge. However, it would have been obvious to make the one-piece cartridge of Regan in two pieces since the function is the same. See *In re Nerwin v. Erlichman*, 168 USPQ 177, 179 and *In re Dulberg*, 129 USPQ 348. In reference to claim 12, in separating the cartridge of Regan into sections, the sections would appear to be interchangeable. In reference to claim 13, Regan shows a tab 82 on one end of the spool 78. In reference to claim 14, Regan does not show interlocking members for coupling the two sections together, but it would have been obvious to employ coupling members to join the two sections. Regan shows coupling members or tabs 92, 92 on the top brace to snap fit with the opposite side wall 68. Regan also shows tabs 94 to snap fit the cartridge within the channels 96 on the rear wall 30 and support wall 20. In reference to claim 15, Regan shows an opening in the top brace 88 to view the adhesive roll to determine whether the adhesive is spent. In reference to claim 16, Regan shows the adhesive roll connected to spools 78, 85 that would be on separate cartridge sections upon dividing the cartridge into separate pieces. Inherently the cartridge sections may be separated to align respectively with associated spaced receptacles such as channels 96. In reference to claim 17, Regan shows end walls, sidewalls, and flat wall portions contiguous with an associated end of the curved end wall. The sidewalls 69 of Regan are flat, but it would have been obvious to employ curved sidewalls since changes in shape are obvious. See *In re Dailey et al.*,

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149 USPQ 47. The claims should be amended to recite more structure of the cartridge to overcome Regan particularly in regard to the tabs that connect the two sections.

Response to Arguments

7. Applicant's arguments filed June 10, 2004 have been fully considered but they are not persuasive. Applicant argues that the present invention has two advantages over Regan. First applicant argues that the two cartridge sections cooperate to enclose the adhesive trapping medium. However, one skilled in the art would have found it obvious to provide the adhesive of Regan with a removable sheet to which would be removed before use to prevent contact with the adhesive when handling and placed back over the adhesive before removal of the cartridge. It should be pointed out that removable sheets covering adhesives are old and well known in the art. Second, applicant argues that the cartridge can accommodate "use" length of trapping medium to traps of different lengths. However, it would have been obvious to change the length of the cartridge of Regan to suit different sized traps since changes in size are obvious. See *In re Rose*, 105 USPQ 137. Applicant argues that the case cited by the examiner are based on a misapprehension of law. In the *Nerwin v. Erlichman* case, the Board of Interferences stated that "the mere fact that a given structure is integral does not preclude it consisting of various elements". This supports the examiner's position that given a one piece cartridge, that it would have been obvious to employ a two piece cartridge. Clearly the two piece cartridge can be manipulated such that the adhesive trapping medium is contained between the two sections. Claim 11 does not recite structure that shows how the two sections are coupled together. The cartridge of

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Regan when made from two sections can be coupled together by hand. The case of *In re Dulberg* also supports the examiner's position that it would have been obvious to make the one piece cartridge from two pieces. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Providing Regan with a two piece frame would not preclude the cartridge from working. Applicant has submitted no evidence to back up the statement that Regan requires a rigid frame. The Dailey case is cited to show that changes in shape are obvious.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kurt Rowan
Primary Examiner
Art Unit 3643

KR